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1-25-1996

## Newsletter - 1996-01-25

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# NEWSLETTER

104-1544

25 January 1996

Washington, DC

**H R 660, HOUSING FOR OLDER PERSONS ACT -- AN UPDATE.** Back in April of last year, in response to the number of inquiries I had received about this legislation, I wrote that the House had passed this measure. There were additional developments in the month of December, and this will bring all of those interested up to date.

The Fair Housing Act Amendments of 1988 which amended Title 8 of the Civil Rights Act of 1968 made it unlawful to discriminate in any type of real estate transaction against persons based on familial status or handicap. In 1994, the Department of Housing and Urban Development (HUD) proposed a rule which would determine whether or not a project occupied by senior citizens would be exempt from the law. There was quite a negative outcry about this proposed rule which prompted congressional response. This bill, H R 660, modifies the requirements for exemption from the proposed rule and protects real estate agents of such housing from monetary retribution where compliance is attempted in good faith.

Under current law, housing for older persons is defined as: 1.) housing provided under a federal or state program which HUD determines is specifically designed and operated to assist elderly persons; 2.) housing intended for, and solely occupied by, individuals 62 years of age or older; or 3.) housing where at least 80% of the units are occupied by at least one person 55 years of age or older, and which has "significant facilities and services" specifically designed to meet the physical or social needs of older persons.

In order to guarantee that housing projects which limit their occupancy to the elderly do not discriminate against younger people and families with children, HUD was required to issue regulations for such housing. A proposed rule was issued on 7 July 1994.

According to the proposed rule, if a housing project State or Federal program was specifically designed and operated to assist elderly persons (such as the Section 202 program), it is exempt; if a project or mobile home park was intended for and solely occupied by persons age 62 or older, it is exempt; if a project or mobile home park has at least 80% of its units occupied by persons age 55 or older, and there are significant facilities and services specifically designed to meet the physical needs of the elderly, it is exempt.

The part of the proposed rule which has been met with opposition is the section requiring developments to provide significant services and facilities for those age 55 and over. As a threshold requirement, HUD's proposed rule stated that there must be at least two specifically designed facilities and two services readily accessible to and usable by older persons with mobility, visual and hearing impairments.

Those in favor of the proposed rule believed that the rule was a fair way of eliminating discrimination against families, while ensuring that elderly persons would have facilities and services to provide them with the means to live independently as long as possible.

Those opposing the rule felt it was too vague, and that it left the owners of elderly projects and mobile home parks in doubt as to what is really required to meet the exemption. Many owners and tenants of housing for senior citizens were concerned that the HUD rule would

force them to add costly facilities and services which were not wanted or needed by the residents, and which would result in higher rents or fees that the tenants could not afford.

Because there were so many negative comments on the proposed rule, Congress asked HUD to revise it. HUD published a final rule in the **Federal Register** on 18 August 1995.

The final rule was met with mixed response. It has been a particular concern to the many retirement communities in the southern States that the regulations are still too complicated and unclear.

When the House adopted the Housing for Older Persons Act last April it did so in an effort to bring needed relief to senior citizens all across the country. As passed by this chamber, the bill amended the Fair Housing Act to define housing for older persons as "housing...in a facility or community intended and operated for the occupancy of at least 80 percent of the occupied units by at least one person age 55 years of age or older." The bill deleted the "significant facilities and services" requirement in defining housing for older persons.

The legislation required the housing project or mobile home park to publish and adhere to policies and procedures which would show its intent to provide housing for older persons, age 55 and older. The bill also stated that providers of housing facilities for older persons must comply with HUD rules for verification of occupancy by persons age 55 and over, but that verification can be accomplished by reliable surveys and affidavits of occupancy.

The final section of the bill was designed to protect real estate agents from being sued if they act in "good faith" in promoting the sale of a residence as being exempt and defined as senior housing, and it is later found that the exemption did not apply to the property.

The legislation was then sent to the Senate where it was referred to the Senate Judiciary Committee. The Senate Subcommittee on Constitution, Federalism and Property Rights adopted an amendment by voice vote which specified that to qualify for an exemption to the Fair Housing Act as senior citizen housing, the development or mobile home park must have at least 80 percent of its units "actually occupied by one or more persons age 55 or older," not merely "intended and operated" for such occupancy, as stated in the House version of the bill.

Also, the Senate version of the bill broadens the good-faith exemption from legal liability for anyone who believes that a development qualifies for the senior exemption when selling or renting it to prospective buyers or tenants. This could exclude private sellers of property such as homeowners.

On October 26, 1995, the bill was endorsed by the Senate Judiciary Committee and approved by voice vote, sending it to the full Senate. The Senate passed H R 660 on December 6, 1995. The House agreed to the Senate language under Suspension of the Rules on 18 December and presented the legislation to the President on 19 December. It was approved 28 December and became Public Law 104-76.

If you have additional questions please contact my office here in Washington.  
I will certainly do my best to obtain the answers for you.

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